



Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
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September 14, 2007
MICHIGAN COURT FORMS COMMITTEE
Minutes of September 6, 2007 Meeting

Present: Chair: George M. Strander, Ingham County Probate Court
Douglas G. Chalgian, Elder Law Section
Pamela Jarvis, Barry County Probate Court
Hon. R. Terry Maltby, Sanilac County Probate Court
Michael J. McClory, Wayne County Probate Court
Harold G. Schuitmaker, Probate and Estate Planning
Hon. Kenneth Tacoma, Wexford County Probate Court
Joan Von Handorf, Probate and Estate Planning
Velma Weston, Kalamazoo County Probate Court
Amy L. Byrd, State Court Administrative Office (staff)
Jill Booth, State Court Administrative Office (staff)
Traci Gentilozzi, State Court Administrative Office (staff)

The meeting was called to order at 9:30 a.m.

Committee members were advised of the new process for developing and revising SCAO-Approved court forms and that information was available on the website.

Introductions were made. Traci Gentilozzi was introduced to the committee as the new SCAO Forms and Manuals Analyst for the State Court Administrative Office.

A. Notice of Minor Corrections

The committee agreed that forms requiring minor changes, such as spelling, citations, grammar, punctuation, etc., will be corrected by the State Court Administrative Office. The following forms will be corrected and distributed in December 2007: PC 548, PC 551, PC 553, PC 554, PC 555, PC 556, PC 560, PC 561, PC 562, PC 563, PC 563a, PC 566, PC 579, PC 580, PC 588, PC 594, PC 596, PC 611, PC 613, PC 614, PC 615, PC 624, PC 626, PC 628, PC 629, PC 632, PC 636, PC 638, PC 643, PC 644, PC 655, PC 656, PC 658, PC 661, PC 664, PC 665, PCM 202, PCM 203, PCM 205, PCM 208, PCM 211, PCM 212, PCM 214a, PCM 215, PCM 215a, PCM 216, PCM 217a, PCM 219, PCM 220, PCM 222, PCM 223, PCM 224, PCM 225, PCM 227, PCM 231, PCM 232, PCM 233, PCM 234, PCM 235, PCM 236, PCM 243, and PCM 244.

B. General Requests

1. Notary

The committee discussed a request to include a place for the printed name of the notary in situations where the notary does not use a stamp. Members were asked whether this was essential since it would affect every form with a notarization. The committee stated that some notaries do not use a stamp, therefore the signature might not be legible. As an alternative to revising the form, members remarked that the notary can just print his/her name underneath the already-existing signature line, which is what some notaries already do. After further discussion and considering the impact on numerous forms, the committee agreed the revision was unnecessary. The notary can print or type his/her name below the signature line, and in situations where the validity of the signature is in question, there are procedures in place for dealing with this. The committee agreed this probably doesn't happen frequently enough to warrant revision.

2. MCL 700.1309, Appointment of Special Fiduciary

The committee considered the suggestion that MCL 700.1309 be added to those forms that refer to the appointment of a special fiduciary and agreed that it should be added to PC 558, PC 559, PC 604, PC 605, PC 607, PC 638, PC 638a, and PC 640 because cites are useful.

C. General and Miscellaneous Forms

3. PC 577, Inventory

The committee discussed a request to either revise PC 577 or create a new inventory form for use in conservatorships to reduce the confusion caused by joint ownership of property. Members considered several other questions: should the form include space for indicating proof of the latest SEV at the date of the decedent's death and the value of other property, such as an auto and should the form indicate that any property over a certain amount, such as \$500 be appraised? Members declined to provide instruction or space for this information on the form.

Members remarked that there would probably be confusion about when to use a separate inventory because the confusion and inconsistencies in valuing property also occurs in certain estates and trusts that do not have a conservator. Several options were discussed, but all of them presented solutions that would be too complicated for lay persons to understand. After considerable discussion about the inventory and accounting process and the various situations where the value of joint property needs to be reported at 100% of its value, the committee agreed that two separate inventory forms should be created. To clarify when to use the conservatorship inventory, members agreed that a note should be added to form PC 577 that states, "Do not use this form if you are a conservator. Use form PC 674." **Staff Note:** The cite to MCL 700.5417 on the footer of the form should be deleted because the cite pertains to conservatorships, which the form will not longer include.

The committee turned its focus to the draft conservatorship inventory and offered a number of variations to the language. Members acknowledged that completing the form will be difficult for nonattorneys regardless how instructions are written. Therefore, members decided to follow the language in MCR 5.409(B). The following language was approved for the introductory language at the top of the form: "I, _____, am the conservator and submit the following as a complete and accurate inventory of all the assets of the estate, including the fair market valuations as of the date of qualification as conservator. Any property the protected person owns jointly or in common with others, I have listed on this inventory, including the type of ownership." **Staff Note:** It is suggested that order of the sentence be changed to: "I, _____, am the conservator and . . . conservator. I have listed on this inventory any property the protected person owns jointly or in common with others, including the type of ownership."

It was suggested that the two columns be converted to one column, with a check box at the end of each line for indicating when the property is held jointly. The committee agreed. In addition, members stated that further instructions should be added in the area entitled "Personal Property and Real Estate" as follows: "Check if the property is owned by both the protected person and others, and specify the type of ownership below." **Staff Note:** For purposes of clarity, it is suggested this note say "If the property listed below is owned by both the protected person and others, specify the type of ownership in the description and check the box in the column for the Value of Property." In addition, cites to MCL 700.3706, 700.3707 and MCR 5.307 and 5.310 should be deleted from the form because they do not pertain to conservatorships, which the new form includes.

The committee also agreed that, in order to make things more clear regarding joint property and in response to the inquiry about providing space for proof of the latest SEV on the date of the decedent's death, the instructions on the back of the the new Conservatorship Inventory form will state: "Property that the protected person owns jointly or in common with others must be listed along with the type of ownership. The court may require additional information to support the value of property that is stated in the inventory." **Staff Note:** It is suggested that the back of the 8/07 version of the Inventory be used as the basis for the new Conservatorship Inventory instead of the 11/05 version that was used for the draft because it includes the language approved by the committee in 2006, with adjustments as appropriate.

Both forms were approved as revised.

4. **PC 584, Account of Fiduciary**

Wayne County Probate indicated that there was no issue regarding itemization for Schedules A and B and that there may have been a misunderstanding by Lexis-Nexis' client. Since there was no issue, the agenda item was withdrawn.

5. **PC 585a, Petition to Allow Account(s) and PC 585b, Order Allowing Account(s)**

The committee discussed the suggestion to modify these forms for use with trusts in situations where a bonded trustee, who is requesting allowance of the final account, can have the bond cancelled and the trust closed. The committee reviewed the suggested language for

PC 585a that was provided by Cindy Rude of Calhoun County during the 30-day comment period and considered other optional language. Because item 6 will apply now to any fiduciary and not just a conservator, reference to allowance of the final account is no longer necessary. That language is in item 5. Members approved the following language for item 6: “6. ☐ That I be discharged. ☐ Bond be canceled. ☐ The estate be ☐ continued. ☐ closed.”

The committee reviewed the suggested language for PC 585b that was provided by Cindy Rude of Calhoun County during the 30-day comment period and considered other optional language to make the form more understandable. Because items 8 and 9 will apply now to any fiduciary and not just a personal representative or the conservator, reference to the final account is no longer necessary. That language is in item 6. Members approved the following language for item 8 and 9:

“☐ 8. ☐ a. The fiduciary is discharged. ☐ b. Upon filing proof of proper transfer of remaining assets, the bond will be canceled, and the fiduciary will be discharged.”
☐ 9. The file is closed.”

Also, the cites at the foot of the form will be corrected as noted by SCAO staff.

Both forms were approved as revised.

Staff Note for PC 585a: It is suggested the word “that” be added after each check box in item 6. Also, the cites at the foot of the form will be corrected as noted by SCAO staff.

6. PC 647, Order Approving Sale of Real Estate

The committee discussed a request to change item 7 because it was confusing to an attorney. Apparently, the attorney was unclear whose name was to be placed on the line. Members agreed the item 7 could be confusing to some attorneys and agreed the caption for the name line should be changed from “Name” to “Name of buyer.”

Because the form was being revised anyway, a member pointed out that this order is designed only for approving a sale and suggested that it be changed to permit denial of the sale. The committee agreed. As a result, a check box was placed in front of item 7 and a new item 8 was added that states, “☐ 8. The sale is denied.” To accommodate the expanded use of the form, the title was changed to “Order Regarding Sale of Real Estate.”

The form was approved as revised.

D. Probate Estate Forms

7. PC 556, Petition and Order for Assignment

The committee considered a request to add an instruction to PC 556 warning that the court may require the petitioner to file a Testimony, Interested Persons (form PC 565) pursuant to MCL 700.3982.

After some discussion, the committee agreed that no action should be taken at this time, particularly since the requirement for a testimony regarding interested persons is a local decision. A court has the authority to require any documentation it deems necessary, therefore, the form should not refer to any one particular document absent specific statewide court rule or statutory authority requiring it.

The form was unchanged.

8. PC 559, Petition for Probate and/or Appointment of Personal Representative and PC 594, Petition for Adjudication of Testacy and Complete Estate Settlement

The committee discussed Judge North's request to reconsider his original suggestion that language state specifically in the "request" portion of these forms "that the court find the will is valid and admit it to probate." The request had been made in 2006 and, while the committee agreed to a change, it used slightly different language on both the forms. Shortly after the meeting, it was requested the committee reconsider the language used.

Upon discussing various options, the committee agreed to the following language: "□ An order determining heirs and that the decedent died □ intestate. □ testate and that the document(s) stated in item 8 are valid and admitted to probate." This language was added to item 16 of PC 559 and item 14 of PC 594.

Both forms were approved as revised.

9. PC 572, Letters of Authority

The committee discussed a request to preprint on the form that the personal representative must pay a certified copy fee of \$12.00 pursuant to MCL 600.2546, in order to compel uniformity in practice.

Members concluded that this would be inappropriate for several reasons: 1) there is no consistency among local courts as to how much is charged (some courts charge nothing, some courts charge \$11, some courts charge \$12) and 2) the form should not be used as a means of compelling uniformity with regard to charging of fees. Committee members noted that another factor weighing against the recommended change is that judges can waive the fee altogether.

The form was unchanged.

10. PC 587, Notice of Continued Administration

The committee discussed a request to expand the note in item #3 so that it is clearer it doesn't apply only to a change of address for interested persons who were listed in the initial petition/applications. Members agreed that the parenthetical statement could be misinterpreted and that the preparer of the form would not comply with the main sentence in the item. The committee considered several options to make the parenthetical statement clearer, including requiring the personal representative to provide the names and addresses of

the current interested persons. The problem with this option is that it would require the court to compare the interested persons on file with the interested person listed on the form, which would take a great deal of time that courts do not have. Another option was to advise the preparer to list any newly discovered interested persons as well as providing information about changes in addresses.

After considerable discussion, the committee concluded that the statement itself is clear and clarifying the parenthetical statement or adding necessary instructions would impact a large number of the forms that do not have enough space available to accommodate these additional instructions.

The form was unchanged.

11. PC 589, Notice of Intent to Close Estate Administration and Terminate Personal Representative's Authority, and PC 593, Petition for Complete Estate Settlement, Testacy Previously Adjudicated

The committee discussed a question about how to make it clear in item 3b that neither PC 593 nor PC 594 are the petitions being referred to in the second bullet, including whether an instruction should be added to the form or whether a new petition should be created for use by interested persons, and a suggestion that an option be added to item 1 of PC 593 to indicate that the petitioner is an interested person with an option in item 6 that permits the interested person to request the court to order the personal representative to file a final account and any other necessary paperwork to complete the estate. Members remarked that the Petition and Order, form PC 586, could be used and considered adding this reference to the form, but they agreed attorneys often draft their own forms in this regard.

The committee referred to MCL 700.3951 and noted that the language in the notice follows the language in the statute. It concluded that any instruction added to the form would simply add a level of complexity to the form that would probably produce more confusion for nonattorneys than it resolves. Members commented that in a case where there is no attorney and an interested person completes PC 593 in error, a court can explain that this form is not for use by the interested person and that the Petition and Order, form PC 586, can be used instead.

The forms were unchanged.

12. PC 590, Sworn Closing Statement, Summary Proceeding, Small Estates

The committee discussed a suggestion to revise items 4 and 6 to state more fully what is set forth in MCL 700.3988.

Members remarked that the language appeared to comply with the statute, but that it was simply in a different order and did not think the form needed revision. However, members noticed that reference to burial expenses had been omitted. Since the form would need to be revised to include this reference, the committee agreed that item 2 should use the statutory language.

Members agreed that reference to creditors should be added to item 6. Members were asked whether reference to demandants should be removed since it is not included in MCL 700.3988, but they responded that demandants are to be provided with a copy of the sworn statement pursuant to MCL 700.3205. The committee agreed that reference to MCL 700.3205 should be added to the foot of the form.

The committee also agreed “Small Estates” should remain in the form’s title, even though most members agreed it’s a misnomer.

The form was approved as revised.

13. PC 591, Sworn Statement to Close Unsupervised Administration

The committee discussed a suggestion to revise item 2 to make it clearer that it only applies when publication is required by law. There are several situations in which publication is not required as set forth in MCR 5.306(C)(2) and the current language has been interpreted to mean that publication is always required by law. The committee considered the suggestion to place a check box in front of item 2 or to state that “I have published notice to creditors when required by law.” Members concluded that a check box is inappropriate because it implies the personal representative can determine when to publish notice, and the term “when” produces the wrong verb tense.

The committee also considered a suggestion to reword item 3 so that it states more fully the language in MCL 700.3954(1)(b) with regard to the payment of costs.

Members remarked that item 3 appeared accurate as written, but agreed to use the statutory language in part. Since estate and inheritance taxes are dealt with separately in item 5, the statute was not followed with regard to the tax language. Accordingly, item 3 was changed to: “I have fully administered this estate by paying, settling, or disposing of the claims that were presented, the estate and administration expenses, and all other taxes. I have distributed the assets of the estate to the persons entitled to the assets.*”

The form was approved as revised.

14. New Form, Affidavit of Incumbency

The committee discussed a request to develop a new form, Affidavit of Incumbency, for use under MCR 5.501(E). Members remarked that this particular court rule does not appear to apply to this form and inquired about its intended function. Apparently, the form is required by some courts as a means of expediting the closing of trusts not registered with the court and that are created by a pour-over will. The committee concluded that there is no specific authority requiring this form and expressed its preference not to create a statewide form for local practice. Once a statewide form is created, if a trustee decides to prepare an affidavit of incumbency, that trustee would be required to use the SCAO-Approved version. Members concluded that this may not be a desirable outcome and declined to develop the form.

E. Guardianship and Conservatorship Forms

15. PC 625, Petition for Appointment of Guardian of Incapacitated Individual

The committee discussed a request to add language to PC 625 to clarify when it is more appropriate to use PC 658 instead. Members agreed that there is often confusion about which form to use but that the issue relates to practice and should not be regulated by instructions on the form. Also, the committee declined to include language to indicate at what age the condition first occurred because that is not the only factor to be considered when determining whether an individual is developmentally disabled versus legally incapacitated, and there are other, more effective screening procedures that can be, and currently are, used by courts.

The committee did not address the need to be change language on the form with regard to jurisdiction (the residence of the person versus where the person is located).

The committee noted the conflict between MCR 5.125(C)(22) and MCL 700.5311(1)(a) with regard to interested persons, but remarked that the Michigan Court Forms Committee was not the proper forum for deciding which authority applies in this particular instance. Members recommended that the issue be taken up by the Supreme Court through court rule amendment.

The form was unchanged.

16. PC 638b, Order Regarding Appointment of Guardian for Individual with Developmental Disability

The committee discussed a suggestion to add an option in item 8 so that a successor guardian can be ordered to file a bond. Members agreed and added a check box to item 8 that states, “☐ bond in the amount of \$ _____.”

The form was approved as revised.

Staff Note: It is suggested that the language be the same as that on PC 631, which states: “Bond at \$ _____ must be filed.” This language appears between the first sentence and the last sentence that starts “After qualification, . . .”

17. PC 639, Petition for Appointment of Conservator and/or Protective Order

As discussed previously in agenda item 15, the committee acknowledged the conflict between MCR 5.125(C)(22) and MCL 700.5311(1)(a) with regard to interested persons, members recommended that the issue be taken up by the Supreme Court through court rule amendment.

18. PC 642, Order Appointing Guardian Ad Litem/Attorney/Lawyer Guardian Ad Litem

The committee discussed a suggestion that reference to 24 hours be replaced with a blank in item 4 because there is no specific authority for the 24 hours and a court may require a

different minimum time frame for filing the report. Members agreed that there is no authority for the 24-hour requirement but remarked that it could be left on as an option because the court can choose any time period it wants. Item 4 was changed to state, "A written report with recommendations shall be filed with the court ☐ at least 24 hours before the hearing. ☐ by _____."

The form was approved as revised.

Staff Note: It is suggested that a caption for "Date" be added to beneath the line in item 4 unless members believe a court would insert a different requirement, such as, "7 days prior to hearing," as provided in the sample from Macomb County. If members believe a court would insert something other than a date, the option should not begin with "by," and the line should include a caption that says "specify other time frame."

19. PC 657, Order Following Hearing to Terminate Minor Guardianship

The committee discussed a suggestion to add language to item 10 to accommodate situations where a parent needs extra proof the child was returned to them when required by a school or some other government entity. The committee discussed various options, including the language provided in the agenda which says: "The minor is returned to the home of the parent who had custody prior to the guardianship." After considerable discussion, the committee declined to add the requested language, primarily because the term "custody" will cause confusion. For example, the term custody could be interpreted to mean "legal" custody and this order could be misconstrued as an order changing legal custody when the child is returned to a parent other than the "legal" custodian named in another court order, such as a judgment of divorce.

The form was unchanged.

20. PC 669, Proof of Restricted Account and Annual Verification of Funds on Deposit

The committee discussed a request to revise the form so that it can also be used for adult conservatorships and a request to create two additional forms for use when there are no assets in the conservatorship.

The committee concluded that the form should not be changed to accommodate adult conservatorships because MCR 5.409(C)(4) only requires this form for minor conservatorships and courts that restrict accounts in adult conservatorships can create local forms to meet their needs. The committee agreed that a conservatorship with no assets will pose a problem for the court in its followup procedures and delinquency reporting to the SCAO because no verification will be filed with the court. However, members decided not to create these additional forms at this time because courts can create local forms if necessary.

Staff Note: The SCAO will followup with JIS to determine what impact these situations have on reporting delinquencies and what solutions are necessary, including development of statewide forms such as the ones provided by Kalamazoo County.

21. Petition and Order to Use Funds

The committee discussed a request to develop a petition and order for use of funds in a conservatorship and agreed to adopt the proposed draft, with minor changes. The title will include reference to conservatorship and members agreed to the application of SCAO forms standards with regard to the masthead, the declaration, grammar, and overall style during typesetting.

Members made slight changes to the Order portion of the form. Because some of the funds in the estate might not be restricted, the statement "Access to the remainder of the funds are still restricted" was changed to "If restricted, access to the remainder of the funds is still restricted." Members also remarked that the court should be allowed to prescribe the time for filing receipts or proof that the money was used as ordered. Therefore, a date line was included at the end of the last sentence in the order in place of the phrase "within 30 days."

Staff pointed out that the Case File Management Standards specify the authority for requiring the seal of the court and that, if there is no authority, the court is not required to seal a document. It was suggested that the instructions to the bank to not accept anything other than a certified copy of the order with the court's seal were inappropriate in light of these standards. While members expressed concern about proving the validity of the order, committee members acknowledged that many banks currently accept documents that are not certified and do not have a seal. Courts can seal documents as a local practice, but committee members agreed it should not be a statewide mandate. Therefore, the committee deleted the statement "INSTRUCTIONS TO THE BANK: ..." The certification was retained. The cite MCL 700.5427 was added to the foot of the form.

The form was approved as revised, subject to further change during typesetting.

Staff Note: It is suggested that the title be changed to Petition and Order to Use Funds and that the date line that replaced "within 30 days" be changed to just a blank line. That way a court can put in either a date or some other time period, such as within 30 days. A number of other changes were made during typesetting, including adding an item for listing interested persons.

F. Mental Health Forms

22. PCM 201, Petition/Application for Hospitalization

The committee reviewed the letter from Attorney Elizabeth Warner and concluded, as it did last year, that it is appropriate for the petition and application to be combined into one form. The committee declined to modify the form.

The committee also discussed the query about the authority for requiring a personal observation in item 4a. Members responded that the witness must testify as to the facts stated in the petition and that is done through personal observation. So, even though MCL 330.1434 does not specifically refer to personal observation, it is implied. Therefore, no change is required to item 4a.

The committee also responded affirmatively to a request that MCL 330.2050 be added to the foot of the form since the form can be used as a result of a defendant who has been found not guilty by reason of insanity under that statute.

The form was approved as revised.

23. PCM 240, Petition and Order to Transport Minor

The committee discussed a request to clarify that the petition can only be filed by a parent or guardian when the petition is not being filed by the director of the hospital.

The committee remarked that this is not entirely accurate. A petition can be filed by any person acting in loco parentis as well as the department of Human Services and the county juvenile agency. As an alternative, members suggested item 1 be changed as follows:

“1. ___ I have authority as _____ and I have requested voluntary
state relationship
hospitalization of the minor who can be currently found at _____.”

The cites MCL 330.14989d(1) and 330.1498h were added to the foot of the form.

The form was approved as revised.

24. PCM 241, Notice of Right to Request Hearing

The committee discussed redesign of the form versus creation of a new form to accommodate use when an individual is returned to a hospital by a psychiatrist's order as permitted pursuant to MCL 330.1474a and 330.1475a. The committee had agreed in 2006 that the use of this form should be expanded and made suggested changes to the form; however, the SCAO discontinued typesetting pending changes it had recommended to MCR 5.744 until the rule more accurately reflected the statutes.

Once MCR 5.744 was amended, the SCAO believed it would be more suitable to develop a separate form for use with a return pursuant to a psychiatrist's order because the basis for the request is much different and it would complicate PCM 241 too much. The committee agreed with the SCAO's suggestion to create a separate form for use with return to hospital pursuant to a psychiatrist's order and recommended the SCAO draft the form for publication and inclusion in the agenda for next year's committee meeting.

25. New Forms, MCL 330.1519

The committee discussed an inquiry into the need for forms pursuant to MCL 330.1519. The committee decided new forms are necessary and asked the SCAO to develop proposed forms publication and inclusion in the agenda for next year's committee meeting.

26. PC 638, Petition to Terminate or Modify Guardianship/Petition to Terminate or Modify Conservatorship

This form was not included in the agenda that was published for comment; however, it was discussed pursuant to procedures which state that any form slated for minor corrections can be discussed if members raise substantive issues with the SCAO before the day of the meeting. Since this item was raised before the meeting, it was included for discussion. However, members were advised that any recommendation or resolution of the committee must be published for comment before the change can be finalized, and will be placed back on the committee's agenda for 2008.

The committee discussed a request to split the current SCAO form (PC 638) into two separate forms – one for guardianships and another for conservatorships. A request was also made to modify item #2 to require that the interested persons and their addresses be listed.

The committee agreed that two separate forms would be helpful and, since it was a last-minute request, the committee decided to put the issue on the agenda for next year.

Meeting adjourned, 3:00 p.m.

Respectfully submitted,

Traci Gentilozzi, Forms and Manuals Analyst
Amy L. Byrd, Forms and Records Manager